

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TEIRA M.,

Claimant,

OAH No. 2011020142

vs.

REDWOOD COAST REGIONAL  
CENTER,

Service Agency.

**DECISION**

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 14, 2011.

Claimant Teira M. was represented by her mother, Colleen M.

Nancy Ryan, Attorney at Law, represented service agency Redwood Coast Regional Center (RCRC).

The hearing was conducted by telephone from Oakland. The parties and all of the witnesses were at the RCRC office in Eureka.

The record closed on March 14, 2011.

**ISSUES**

1. Whether RCRC is required to contract with Multiplicity Therapeutic Services to obtain behavioral services for claimant.

2. Whether RCRC is required to purchase 78 hours per month of behavioral services for claimant.

3. Whether RCRC failed to provide claimant with IPP services from August 28, 2010, to the date of hearing.

4. Whether RCRC is required to compensate claimant for the time that she did not receive services as specified in her IPP.

## FACTUAL FINDINGS

1. Claimant is currently 10 years of age. She lives with her adoptive mother Colleen M., her mother's boyfriend (collectively parents), and his twin four-year-old sons in Eureka. Claimant receives services from RCRC, pursuant to a diagnosis of mild intellectual disability in accordance with her Individualized Program Plan (IPP). Claimant's IPP includes behavioral support services, which are funded by RCRC.

2. Claimant was removed from her biological mother because of abuse. She was made a dependent child of the juvenile court and placed with a foster family. In January 2007, Colleen M. was working as a respite provider and behavioral support aide, and was assigned to work with claimant. Claimant has lived with Colleen M. since January 2009 and the adoption was finalized in December 2009.

3. Colleen M. has worked with special needs children for approximately 15 years, but finds that being claimant's parent is different than working with her as an aide. Colleen M. has some knowledge of behavioral techniques, but still needs support, particularly in the area of safety and acting-out type behaviors. Claimant is generally well behaved, but does exhibit aggressiveness on a daily basis, including hitting people. She has a continuing habit of dropping to the floor or ground in both safe and unsafe locations. Her parents also report that she is prone to running out into traffic and will unbuckle her seatbelt and attempt to exit the vehicle if not restrained. Her parents report that these dangerous behaviors have escalated since approximately June 2010. In addition, claimant is not yet toilet trained, and Colleen M. desires more assistance to teach her.

4. Claimant's behavioral needs are acknowledged in her IPP's. The January 14, 2009, IPP addressed the transition from claimant's foster family to Colleen M.'s home. It provided for "behavioral respite" of 85 hours per month. This service was provided to claimant by Changing Tides Family Services (CTFS), until that agency was terminated by Colleen M. on June 28, 2010. Colleen M. sought out a different agency, and planned to report to her RCRC service coordinator her choice of a new provider in early August 2010. During that time a new provider, Inclusive Education and Community Partnership (IECP) was becoming established in the Eureka area. Although Colleen M. had chosen Multiplicity Family Services, RCRC staff believed IECP would best serve claimant's needs. Colleen M. therefore agreed to wait for IECP to contact her to arrange an assessment.

5. Meanwhile, RCRC was working on implementing major changes to its operations because of changes in the law. Effective July 1, 2009, the California state legislature enacted amendments to the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500 et seq.) The amendments changed the rules significantly regarding the structure and funding of certain services, including behavioral support. Relevant to this matter, the law required regional centers to separate out respite from behavioral services. Hence, the general category of “behavioral respite” no longer exists.

6. Kimberly Smalley, Ph.D., is a board-certified applied behavior analyst and RCRC employee. She oversees the caseloads of the behavior analysts. She is also an autism specialist. Smalley explained that the new law required more parental involvement than it had previously. She went over the IECF assessment and plan with Colleen M. and others on claimant’s team. Smalley found that many of the goals, including toileting, were in the area of parental responsibility under the new law. Accordingly, RCRC is not able to fund a one-to-one service provider for those goals. Instead, a consultant would be able to provide assistance to the parent to work towards achieving the goals.

7. The result of the change of service providers was that claimant was without a behavioral program from June until late October of 2010. There were a variety of reasons for this and it was not proven that RCRC was at fault. It took IECF longer than expected to become operational in the Eureka area. IECF conducted an initial assessment of claimant that included seven direct observations and on January 10, 2011, proposed a Behavior Support Plan with up to 78 hours per month of “direct services and supervision.”

8. Colleen M. reports that during the several month gap in service, claimant “regressed a lot.” Although she tried to keep the same program going, without the support of the consultant and staff claimant became more resistant and aggressive, including hitting, biting, and kicking Colleen M. and the boys.

9. An IPP Addendum dated July 13, 2010, reflects Colleen M.’s cancelation of CTFS effective June 30, 2010. It also reflects the change in the law, in that respite is separated out from behavior services and progress reports must include notes regarding parental participation. It provides for a 12-hour evaluation by IECF and 51 hours a month of ongoing direct services and consultations.

10. Claimant’s current IPP is dated November 17, 2010 and January 10, 2011. As of the earlier date, Colleen M. did not agree with the recommendations of RCRC staff for behavioral services, but agreed to wait until the IECF assessment was complete. Following the receipt of that assessment, claimant’s RCRC service coordinator “staffed [Claimant’s] needs and [Colleen M.’s] requests with CU Supervisor and RCRC Behavior Analyst/Autism Specialist [Smalley] on 12/17/10, 12/28/10 and 01/11/11.” It was determined that claimant “would benefit from continuing to work with IECF,” and RCRC recommended continuing her Intensive Behavioral Program through IECF at 55 hours per month.

11. Colleen M. did not agree with the recommendation, both as regards service and provider, but as the IPP notes, she accepted “continued behavior intervention with IECF since [claimant] needs behavior intervention.” Colleen requested a Notice of Proposed Action be issued and advised that she would be pursuing a fair hearing.

12. On January 25, 2011, RCRC issued a Notice of Proposed Action stating that it “declines to fund Intensive Behavioral Services through Multiplicity Therapeutic Services (MTS) as requested by parent” and “declines to increase and fund intensive behavior direct service hours as requested by parent.” The reasons given are that claimant “does not have intensity of needs that MTS services. Identified unmet need of social skills development would better be met by [IECF]. Parent declined other Behavior programs offered. Parent agreed to continue working with IECF at this time.” In addition, it was found that claimant’s “identified level of need does not require additional intensive behavior direct service hours.”

13. Colleen M. filed a fair hearing request on claimant’s behalf, as well as a request for an informal meeting. On February 16, 2011, Kathleen Kasmire, RCRC Director’s Designee, convened a meeting. In a written decision dated February 24, 2011, Kasmire discussed the facts and applicable law and determined that claimant was not entitled to the services requested. Claimant continued in her appeal and this hearing followed.

#### *Vendor choice issue*

14. Colleen M. chose Multiplicity Therapeutic Services (MTS) for a variety of reasons, including her opinion that their staff is better able to meet claimant’s needs. In addition, she is not happy with the service that IECF provides.

15. RCRC staff believes that MTS serves a very different client base in that their clients face much greater challenges than claimant does. For example, MTS serves violent clients who are involved with the criminal justice system. In addition, MTS is more expensive, and regional centers are required to provide the most cost-effective services. It was concluded by RCRC that claimant’s behaviors do not warrant the extra expense.

16. Charles Chojnacki is the President and CEO of MTS. He testified that his agency serves primarily autistic individuals, but includes all types of developmental disabilities. Their typical clients have behavioral challenges that are excessive along with skill deficits. He has not read claimant’s assessments, but believes his agency could serve her needs. Chojnacki notes that parental participation is required in MTS programs.

17. At present, RCRC is not contracting with MTS. For administrative reasons not further explained, the agency is on a “no-referrals” list for an unspecified period of time.

18. It was not established that IECF is not meeting claimant's needs for behavioral services. A parent's personal preference for a particular vendor or provider is insufficient grounds to order a regional center to contract with that vendor. Further, MTS, the preferred provider, cannot be contracted with at present for administrative reasons.

*Service hours issues*

19. Claimant's RCRC team considered the recommendations of IECF for 78 hours a month for direct services and supervision. The team concluded that 45 hours of skills acquisition and 10 hours of supervision/parent consultation would meet claimant's needs.

20. Colleen M. believes that she needs more direct help to teach her how to be an effective parent for claimant. She is therefore requesting more hours than RCRC has authorized.

21. It was not established that claimant's needs for behavioral services exceed the amount of time RCRC has authorized.

*Service "gap" and compensation issues*

22. Colleen M. asserts that RCRC should provide some form of compensation for the gap in services following her termination of CTFS and the institution of service by IECF.

23. It was not established that RCRC failed to serve claimant pursuant to her IPP or that there was a lack of service that it was responsible for. Even if this were shown, claimant has not cited any provision of law supporting her compensation request.

## LEGAL CONCLUSIONS

1. The purpose of the Lanterman Developmental Disabilities Services Act:

[I]s two-fold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more productive and independent lives in the community.

*(Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384, 388.)*

2. The Department of Developmental Services is the state agency charged with implementing the Lanterman Act. The Act, however, directs the Department to provide the services through agencies located in the communities where the clients reside. Specifically:

[T]he state shall contract with appropriate agencies to provide fixed points of contact in the community . . . . Therefore, private nonprofit community agencies shall be utilized by the state for the purpose of operating regional centers.

(Welf. & Inst. Code, § 4620.)

3. In order to determine how the individual consumer shall be served, regional centers are directed to conduct a planning process that results in an IPP. The planning team includes the consumer or his representatives, agency representatives and other appropriate participants. Once the IPP is in place:

A regional center may . . . purchase services . . . from any individual or agency which the regional center and consumer . . . or [his or her] parents . . . determines will best accomplish all or any part of that [IPP].

(Welf. & Inst. Code, § 4648, subd. (a)(3).)

The planning team process does not require a regional center to purchase services based only upon a parent's preference. Cost-effectiveness and the expertise of the professionals are required considerations. In this case, the preferred vendor is not even available. And claimant did not demonstrate that the approved vendor is not an appropriate choice.

4. In 2009, the Legislature added Welfare and Institutions Code section 4686.2 to the Lanterman Act. That section restricts the purchase of behavioral intervention services in many ways, including limiting the services allowed and creating specific measurements and reporting requirements. RCRC was required to implement these changes, and did so appropriately in claimant's case. It is understandable that Colleen M. would desire the services to remain the same or increase, based upon both the family's needs and the perceived needs of her daughter. But the record does not contain facts sufficient to overrule RCRC's reasoned decisions. Accordingly, the appeal will be denied.

## ORDER

Claimant Teira M.'s appeal is denied.

DATED: March 24, 2011

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MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.**